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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION

Rapporteur: Mr. Francisco Villagran Kramer

CHAPTER VII

OTHER DECISIONS AND RECOMMENDATIONS OF THE COMMISSION

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A. Programme, procedures and working methods of the Commission and its documentation

1. At its 2378th meeting, on 2 May 1995, the Commission noted that, in paragraph 8 of resolution 49/51, the General Assembly had requested it:

"(a) To consider thoroughly:

(i) The planning of its activities and programme for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;

(ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee.

(b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

2. The Commission agreed that this request should be taken up under item 8 of its agenda, entitled "Programme, procedures and working methods of the Commission and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

3. The Planning Group held four meetings. It had before it the section of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its forty-ninth session, entitled "Other decisions and conclusions of the Commission" (A/CN.4/464/Add.2, paras. 90-98). Mr. Hans Corell, Under Secretary-General, The Legal Counsel, addressed the Planning Group at its first meeting.

1. Planning of the activities for the remainder of the quinquennium

4. The current programme of work consists of the following topics: State responsibility; draft Code of Crimes against the Peace and Security of Mankind; International liability for injurious consequences arising out of acts not prohibited by international law; The law and practice relating to

reservations to treaties; and State succession and its impact on the nationality of natural and legal persons.

5. In accordance with paragraph 8 (a) (i) of General Assembly resolution 49/51, the Commission considered the planning of its activities for the last year of the current term of office, bearing in mind, as requested by the resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

6. The Commission recognizes that it is impossible to adopt a rigid schedule, but finds it useful to set goals in planning its activities.

7. Taking into account the progress of the work achieved on the topics in the current programme, as well as the possibilities of making further progress, and bearing in mind the different degrees of complexity of the various topics, the Commission intends to attach priority at the next session to the draft Code of Crimes against the Peace and Security of Mankind and to the draft articles on State responsibility, the goal being to complete, by the end of the current term of office, the second reading of the draft articles on the first of those topics and the first reading of the draft articles on the second of those topics. Since the second reading of the draft Code is already at quite an advanced stage, the Commission agreed that most of the time should be set aside at the next session for the topic of State responsibility and that a maximum of time should be allocated in the Drafting Committee to considering the draft articles on State responsibility that are pending before it and completing the second reading of the draft code. With reference to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", the Commission intends to make every effort to complete by 1996 the first reading of the draft articles on activities that risk causing transboundary harm. As regards the topic "State succession and its impact on the nationality of natural and legal persons", the Commission agreed that the Working Group established at the present session would be reconvened at the next session for the purpose of continuing its work; the Commission will then be in a position to submit to the General Assembly various options as to the form which the outcome of its work on the topic should take, thereby responding to the request contained in paragraph 6 of Assembly resolution 49/51. The schedule of work will be established in the

light of the General Assembly's reaction. As to the topic of "The law and practice relating to reservations to treaties", the Commission considers that its work could cover a period of five years as from 1995 and lead to a guide to practice, containing, where necessary, model clauses. On this topic and on the topic of "State succession and its impact on the nationality of natural and legal persons", the Commission intends to make all possible progress at its next session.

8. The Commission agreed that, in order to meet the goals it has set for itself as described in paragraph 7 above, it should, as an exceptional arrangement, allow for at least three weeks of concentrated work in the Drafting Committee at the beginning of the forty-eighth session.

2. Long-term programme of work of the Commission

9. Bearing in mind that some of the topics on its agenda had reached an advanced stage and that it was therefore time to give some thought to the programme of work for the next five-year term of office, the Commission re-established the long-term Working Group set up in 1993.

10. The Working Group, which was open-ended, was again chaired by Mr. Derek Bowett.

11. In the report which it submitted to the Planning Group, the Working Group stated that it had reviewed a number of topics 1/ and had reached certain conclusions.

12. The Commission endorsed the Working Group's recommendation in favour of the topic of "Diplomatic protection". It noted that work on this topic would complement the Commission's work on State responsibility and should be of interest to all Member States. It could cover the content and scope of the rule of exhaustion of local remedies, the rule of nationality of claims as applied to both natural and juristic persons, including its relation to so-called "functional" protection, and problems of stateless persons and dual nationals;

1/ Namely, the topics identified in 1993 (A/CN.4/453), plus the following three topics: diplomatic protection, shared (or transboundary) resources and international recognition.

and it could consider the effect of dispute settlement clauses on domestic remedies and on the exercise of diplomatic protection.

13. The Commission also endorsed the recommendation of the Working Group that work in the nature of a "feasibility study" should begin on a topic concerning the law of the environment. The Commission has since 1993 considered sympathetically topics such as "Global commons" and "Rights and duties of States for the protection of the environment", and the newly-suggested topic of "shared (or transboundary) resources" also has environmental implications. The Commission believes that some preliminary work would be needed before the precise topic, and its content, could be determined, and for this reason, as regards this topic, it believes that more preparatory work should be undertaken.

14. The Commission notes significant progressive development of international law in the various sectors in the field of the environment since the 1972 Stockholm Declaration on the Human Environment. The sector by sector approach so far adopted in the conclusion of various treaties nevertheless involves the risk of losing sight of the need for an integrated approach to the prevention of continuing deterioration of the global environment. The Commission accordingly envisages to take up the subject of international global environmental law. However, as the subject is substantive, wide and complex, it desires to be authorized, as a first step, to conduct an extensive feasibility study of the topic entitled provisionally as "Rights and duties of States for the protection of the environment", so that it would be in a position, after such a study, to recommend to the General Assembly the exact scope and content of the future topic. The feasibility study would encompass general principles, substantive and procedural rules, and measures for the implementation of obligations for the protection of the global environment. The Commission intends to focus more on the field of duties erga omnes where the real complainant of deterioration of the environment is the international community at large rather than individual States, and thus the study would include the topic of "Global commons" as well. It would also cover the environmental aspect of the utilization of "shared (or transboundary) resources". The Commission would avoid duplication of the work being performed by it under the topic of "International liability for injurious consequences arising out of acts not prohibited by international law".

3. Working methods

15. At its last session, the Commission expressed the intention to review the conditions under which the commentaries are discussed and adopted, with a view to the possible formulation of guidelines on the matter. For lack of time, it was not able to discuss all aspects of the question. It agreed, however, that it was desirable for commentaries to draft articles to be taken up as soon as possible in the course of each session in order to receive the requisite degree of attention and, in any case, to be discussed separately rather than in the framework of the adoption of the Commission's report to the General Assembly.

16. At the present session the Commission took up the matter again.

17. With reference to the content of commentaries, the Commission bears in mind article 20 of its Statute, which reads as follows:

"Article 20

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

(a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrines;

(b) Conclusions relevant to:

(i) The extent of agreement on each point in the practice of States and in doctrine;

(ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution."

18. The Commission is aware that the content and length of the commentaries accompanying draft articles depend partly on the nature of the topic and the extent of the "precedents and other relevant data, including treaties, judicial decisions and doctrine". The Commission however encourages the Special Rapporteurs to draft the briefest possible commentaries and to include in them only elements which will make the text of the articles easier to understand and apply. It emphasizes in this connection that commentaries perform a function different from that of the reports by the Special Rapporteurs and that the reports are easily accessible, since they are reproduced in the Commission's Yearbook.

19. The Commission also considers it desirable for the commentaries to the draft articles on the various topics to be as uniform as possible in presentation and length. It encourages its Rapporteurs to pay due attention to this matter.

4. Duration of the next session

20. The Commission wishes to reiterate its view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on its agenda make it desirable that the usual duration of the session be maintained. The Commission also wishes to emphasize that it made full use of the time and services made available to it during its current session.

B. Cooperation with other bodies

21. The Commission was represented at the January 1995 session of the Asian-African Legal Consultative Committee, in Doha, by Mr. Francisco Villagran Kramer who attended the session as observer for the Commission and addressed the Committee on behalf of the Commission. The Asian-African Legal Consultative Committee was represented at the present session of the Commission by the Secretary-General of the Committee, Mr. Tang Chengyuan. Mr. Tang Changyuan addressed the Commission at its 2391st meeting on 30 May 1995 and his statement is recorded in the summary record of that meeting.

22. The Inter-American Juridical Committee was represented at the present session by Mr. Eduardo Vio Grossi. Mr. Vio Grossi addressed the Commission at its 2427th meeting on 29 June 1995 and his statement is recorded in the summary record of that meeting.

C. Date and place of the forty-eighth session

23. The Commission agreed that its next session, to be held at the United Nations Office at Geneva, should begin on 6 May 1996 and conclude on 26 July 1996.

D. Representation at the fiftieth session of the General Assembly

24. The Commission decided that it should be represented at the fiftieth session of the General Assembly by its Chairman, Mr. Pemmaraju Sreenivasa Rao.

E. International Law Seminar

25. Pursuant to General Assembly resolution 49/51, the United Nations Office at Geneva organized the thirty-first session of the International Law Seminar during

the current session of the Commission. The Seminar is intended for post-graduate students of international law and young professors or government officials dealing with questions of international law in the course of their work.

26. A Selection Committee under the chairmanship of Professor Nguyen-Huu Tru (The Graduate Institute, Geneva) met on 16 March 1995 and, after having considered some 80 applications for participation in the Seminar, selected 24 candidates of different nationalities, mostly from developing countries. Twenty-three of the selected candidates were able to participate in the Seminar. 2/

27. The session of the Seminar was held at the Palais des Nations from 22 May to 9 June 1995 under the direction of Mr. Markus G. Schmidt, United Nations Office at Geneva. It was opened by the Chairman of the Commission, Mr. Pemmaraju Sreenivasa Rao. During the three weeks of the session, the participants in the Seminar attended the meetings of the International Law Commission and lectures specifically organized for them.

28. Several lectures were given by members of the Commission as follows: Mr. Guillaume Pambou-Tchivounda: "The International Criminal Court"; Mr. John de Saram: "Realities of the process of international codification"; Mr. Alexander Yankov: "Evolution of the process of codification and progressive development of international law".

29. In addition, lectures were given by: Mr. Marco Sassoli (Legal Adviser, International Committee of the Red Cross): "Contemporary challenges to international humanitarian law"; Mr. W. Lang (Permanent Representative of Austria

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2/ The list of participants in the thirty-first session of the International Law Seminar is as follows: Mr. Chimiddorj Battomor (Mongolia); Ms. Teresa Blanco Gumero (El Salvador); Ms. Kathy-Ann Brown (Jamaica); Ms. Elena Conde Perez (Spain); Ms. Dace Dobraja (Latvia); Mr. Amidou Garane (Burkina Faso); Mr. Ariel Gonzalez (Argentina); Mr. Taïsaku Ikeshima (Japan); Mr. Didace Kiganahe (Burundi); Ms. Elisabeth Kornfeind (Austria); Ms. Andreja Metelko-Zgombic (Croatia); Mr. Saleh Najem (Libyan Arab Jamahiriya); Ms. Catherine Okou (Côte d'Ivoire); Mr. Serge Pannatier (Switzerland); Mr. Alejandro Pastori (Uruguay); Ms. Gaile Ramoutar (Trinidad and Tobago); Mr. Timothy Reilly (Australia); Ms. Devi Rema (India); Mr. Lambert Shumbusho (Rwanda); Ms. Simona Takova (Bulgaria); Mr. Boubacar Tankoano (Niger); Mr. Bounkham Theuambounmy (Lao People's Democratic Republic); and Ms. Glaucia Yoshiura (Brazil).

to the United Nations Office at Geneva): "Trade and environment"; Mr. José Ayala Lasso (United Nations High Commissioner for Human Rights): "Mandate and activities of the High Commissioner for Human Rights"; Mr. Bertie Ramcharan (Political Adviser to the Co-Chairmen of the International Conference on the Former Yugoslavia): "The International Conference on the Former Yugoslavia"; Ms. Merle S. Opelz (Head, International Atomic Energy Agency Office in Geneva): "The results of the latest Non-Proliferation Treaty review conference".

30. Following a lecture given by Mr. Francisco Villagran Kramer on "The state of international law in the context of unilateral acts" and by Mr. Christian Tomuschat on "The consequences of international crimes", two Working Groups were created to deal with those topics under the tutorship of the two speakers. Each Working Group elaborated a paper on its topic which was presented orally at the discussion meeting, at which conclusions were reached. Mr. Villagran Kramer and Mr. Tomuschat noted the high quality of the papers presented by the Working Groups.

31. As has become a tradition for the Seminar, the participants enjoyed the hospitality of the Republic and Canton of Geneva following a guided visit of the Alabama and Council Rooms by Mr. Jérôme Koechlin, Head of Protocol.

32. At the end of the session of the Seminar, Mr. Pemmaraju Sreenivasa Rao Chairman of the International Law Commission, and Mr. Markus Schmidt, on behalf of the United Nations Office at Geneva, addressed the participants. Mr. Serge Pannatier addressed the Commission on behalf of the participants. In the course of this brief ceremony, each of the participants was presented with a certificate attesting to his or her participation in the thirty-first session of the Seminar.

33. Voluntary contributions from Member States to the United Nations Trust Fund for the International Law Seminar permit the granting of fellowships, in particular to participants from developing countries. The Commission noted with particular appreciation that the Governments of Austria, Denmark, Finland, France, Germany, Ireland, Norway, Switzerland and the United Kingdom had made voluntary contributions to the Fund. Thanks to those contributions it was possible to award a sufficient number of fellowships in order to achieve adequate geographical distribution of participants and to bring from distant countries

deserving candidates who would otherwise have been prevented from participating in the session. This year, full fellowships (travel and subsistence allowance) were awarded to nine participants and partial fellowships (subsistence only) to six participants. Of the 690 participants, representing 136 nationalities, who have taken part in the Seminar since its inception in 1965, fellowships have been awarded to 374.

34. The Commission stresses the importance it attaches to the sessions of the Seminar, which enables young lawyers, especially those from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. As all the available funds are exhausted, the Commission recommends that the General Assembly should again appeal to States which can do so to make the voluntary contributions that are needed for the holding of the Seminar in 1996 with as broad a participation as possible.

35. The Commission noted with satisfaction that in 1995 comprehensive interpretation services had been made available to the Seminar and it expressed the hope that the same full services and facilities would be made available to the Seminar at the next session, despite existing financial constraints.